In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.3407 of 1993

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Date of decision:29.11.2006

Rameshwar Dass

.....Petitioner

v.

Birbal and others

.....Respondents

....

Present: Mr. J.R. Mittal, Senior Advocate with Mr. Kashmir Singh, Advocate for the petitioner.

Mr. Rajan Bansal and Mr. Ashok Singla, Advocates for respondent No.1.

None for respondents No.2 and 3.

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S.S. Saron, J.

Learned counsel for respondent No.1 has placed on record photostat copies of judgment dated 26.5.1988 passed by the learned Sub Judge Ist Class, Sunam, judgment dated 19.10.1989 passed by learned Additional District Judge, Sangrur, order dated 31.5.1993 passed by this Court in C.R. No.163 of 1993, Report of the Local Commissioner Sh. R.S. Chauhan, Advocate dated 7.7.1993, the order dated 30.7.1993 passed by this Court in C.R. No.163 of 1993, the order dated 7.7.1997 passed in suit titled Rameshwar Dass v. Shakuntla Devi widow of Birbal Dass and others, copy of sale deed dated 11.11.1991 executed by Kamal Kishore son of Ram Saran in favour of the objector Rameshwar Dass (petitioner) and copy of the

application filed by the petitioner under Order 21 Rule 58 of the Code of Civil Procedure (`CPC' – for short). The same are taken on record.

This revision petition has been filed against the order dated 16.10.1993 passed by the learned Sub Judge Ist Class, Sunam whereby the objections filed by the petitioner Rameshwar Dass son of Ram Nath under Order 21 Rule 58 CPC have been dismissed.

The facts leading to the case are that one Birbal son of Tulsi (decree holder) filed Civil Suit No.124 of 29.4.1987 against the defendants (1) Ram Nath son of Ganesha, (2) Gondu son of Ram Nath and (3) Dharam Pal son of Ram Saran Dass praying for permanent injunction in respect of land measuring 21 Kanals 10 Marlas comprised in Khasra Nos.86//21 (8-0), 22 (8-0) and 23 (5-10) situated in the revenue estate of Moonak. It was alleged by the plaintiff Birbal that Ram Saran Dass was previously the owner of the suit land and after his death his widow Veeran Devi and his three sons Dharam Pal, Jagdish Chander and Kamal Kishore were the owners of the said land. Birbal plaintiff was a tenant under them. The plaintiff Birbal claimed that he has been tenant on the suit land for the last 25 years. However, defendant No.1 Ram Nath son of Ganesha in the said suit at the back of the plaintiff Birbal got the Khasra Girdawri entered in his name which necessitated the filing of the said suit. The defendant No.1 Ram Nath son of Ganesha contested the suit. It was alleged that the plaintiff Birbal was not in possession of the suit land rather defendant No.1 was in possession as a tenant under Ram Saran Dass and after his demise he was a tenant under his widow and the three sons of Ram Saran Dass. The learned Sub Judge Ist Class, Sunam in terms of his judgment and decree dated 26.5.1988 decreed

the suit for permanent injunction in favour of the plaintiff Birbal and against the defendants Ram Nath, Gondu and Dharam Pal. The defendants were restrained from dispossessing the plaintiff forcibly and illegally from the suit land. Ram Nath son of Ganesha and Gondu son of Ram Nath (defendants No.1 and 2) aggrieved against the judgment and decree dated 26.5.1988 filed a civil appeal before the District Judge, Sangrur. The learned Additional District Judge, Sangrur, to whom the appeal was assigned, dismissed the same vide his judgment and decree dated 19.10.1989. The said judgment and decree is stated to be final. Despite the judgment and decree dated 19.10.1989 of the learned Additional District Judge Sangrur, the plaintiff Birbal was dispossessed from the aforesaid land. Accordingly, he filed an application under Order 21 Rule 32 CPC on 14.2.1990 for enforcing the injunction decree in his favour. The said application was dismissed by the learned Executing Court on 19.9.1992. Birbal, plaintiff aggrieved against the order of the executing Court filed Civil Revision No.163 of 1993 in this Court praying for setting aside the order dated 19.9.1992 passed by the Executing Court and restoring the earlier order dated 25.7.1992. In terms of the earlier order dated 25.7.1992, the judgment debtor had made a statement in the execution proceedings that he had surrendered possession to the decree holder on 18.7.1992. In fact, immediately thereafter the decree holder Birbal had filed an application stating that the possession of the land had not been handed over to him and the statement made by the judgment debtor was false. In any case, in the revision petition that had been filed, this Court vide order dated 31.5.1993 with the agreement of the parties appointed Mr. R.S. Chauhan, Advocate as Local Commissioner to ascertain as to who is in

possession of the land in dispute. The Local Commissioner submitted his report dated 7.7.1993 wherein it was observed that Birbal (decree holder) was not shown to be in possession of any piece of land and that Rameshwar Dass son of Ram Nath (petitioner) was in cultivating possession of the suit land. This Court after considering the report of the Local Commissioner observed that since decree had already been passed in favour of Birbal (decree holder) he is entitled to remain in possession. He was dispossessed from the land in dispute after passing of the decree and thereafter the judgment debtor vacated and surrendered the possession to his son who is in possession as per report of the Local Commissioner. It was further held that the judgment debtor cannot be allowed to defeat the lawful decree passed by a Court of competent jurisdiction which had attained finality. It was ordered that the property be attached under Order 21 Rule 32 CPC by issuing a warrant of attachment and thereafter Birbal (decree holder) be put in possession and if need be with the help of Police. The revision petition filed by Birbal, decree holder was accordingly allowed. During this period the petitioner Rameshwar Dass son of Ram Nath is alleged to have purchased the suit land from Kamal Kishore the son of Ram Saran Dass who was the original owner of the property. The land in dispute was purchased vide sale deed dated 11.11.1991 for a sum of Rs.1,61,500/-. Accordingly, Rameshwar Dass son of Ram Nath filed objections under Order 21 Rule 58 CPC objecting to the issuance of attachment warrants ordered by this Court on 30.7.1993. The said application having been dismissed by the learned Sub Judge Ist Class, Sunam vide impugned order 16.10.1993 he has approached this Court.

It is submitted on behalf of the petitioner that the petitioner was not a party in the suit in which the decree was passed and in fact the land was purchased by him vide registered sale deed dated 11.11.1991 from its owner Kamal Kishore alias Kewal Kishore. The vendor gave the possession of the vacant land to the petitioner who is in possession. It is further submitted that in the execution proceedings the petitioner or his vendor were not parties. In fact, the vendor was not even a party in the suit. Therefore, the decree or order is not binding on a person who is not a party to the proceedings.

In response, Mr. Rajan Bansal, Advocate appearing for respondent No.1 has submitted that the order passed by the Executing Court is absolutely justified in the facts and circumstances of the case. It is submitted that Rameshwar Dass who is the vendee is not a stranger. In fact he is the son of Ram Nath who was defendant No.1 in the Civil Suit No.124 of 29.4.1987 which was decreed on 26.5.1988. Besides, it is submitted that the said decree dated 26.5.1988 had been passed in favour of Birbal, respondent No.1 and this Court vide order dated 30.7.1993 passed in Civil Revision No.163 of 1993 had ordered the attachment of property in dispute under Order 21 Rule 32 CPC and thereafter the decree holder be put in possession. Therefore, it is contended that the objections filed are absolutely baseless.

I have given my thoughtful consideration to the entire matter. The factual position as has been noticed above would admittedly show that the petitioner Rameshwar Dass is the son of Ram Nath who was defendant No.1 in Civil Suit No.124 of 29.4.1987 which was decreed against Ram Nath and others on 26.5.1988. Appeal against the said decree was dismissed by

the learned Additional District Judge, Sangrur on 19.10.1989. Thereafter, Birbal (respondent No.1) filed an application under Order 21 Rule 32 CPC on 14.2.1990 for enforcement of the order of injunction in his favour. The said application was dismissed by the Executing Court on 19.9.1992. However, the same was set aside by order dated 30.7.1993 passed in Civil Revision No.163 of 1993. The case of the petitioner is that he had purchased the land in question from Kamal Kishore vide sale deed dated 11.11.1991. A perusal of the sale deed dated 11.11.1991 which is Ex.P.1 would show that it was executed by Kamal Kishore as a share holder. It is recited therein that Kamal Kishore was owner of the land as a share holder (Bataur Hissedari Malak). Besides, it is recorded that symbolic possession had been given to the vendee Rameshwar Dass (Kabza Malkana Mustri Nu De Ditta Hai). It is also recorded that from the date of the sale deed the purchaser would be the owner. It is not mentioned that the purchaser would be the owner and in possession of the land (emphasis added). Therefore, evidently the sale deed dated 11.11.1991 set up by the petitioner Rameshwar Dass does not give him possession of the land and in terms of the order dated 30.7.1993 passed by this Court in Civil Revision No.163 of 1993 the warrants of attachment are to be issued and decree holder Birbal is to be put in possession and if need be with the help of Police. Therefore, lawful orders passed by the Court which include the judgment and decree dated 26.5.1988 which was affirmed by the learned Additional District Judge, Sangrur vide his judgment and decree dated 19.10.1989 as also the order dated 30.7.1993 passed by this Court in Civil Revision No.163 of 1993 cannot be frustrated by resorting to filing of an application under Order 21 Rule 58 CPC. This is more so for the reason

that in terms of the sale deed dated 11.11.1991 executed by Kamal Kishore in favour of the petitioner Rameshwar Dass only symbolic possession had been given. Besides, the petitioner Rameshwar Dass is not a stranger to the litigation. He is the son of Ram Nath who was defendant No.1 in the suit that was decreed on 26.5.1988. The mere fact that Kamal Kishore the vendor of the disputed land was not a party to the original suit is also quite inconsequential for the reason that he had only given symbolic possession. The decree holder Birbal claims to be a tenant in respect of the suit land. In fact in the application under Order 21 Rule 58 CPC filed by the petitioner Rameshwar Dass it is accepted that at the time of execution of the sale deed dated 11.11.1991, the land was in possession of the tenant of the vendor Kamal Kishore alias Kewal Kishore. It is stated by the petitioner that after the Rabi crop of 1992 was harvested, he took possession of the land at the spot in the presence of Kamal Kishore alias Kewal Kishore vendee and Jagjit Singh Lambardar. The petitioner sowed his kharif 1992 crop and is continuing in possession. However, it may be noticed that Rameshwar Dass, petitioner had also filed Civil Suit No.570 on 17.9.1993 which was later amended. The said suit was against Shakuntla Devi widow of Birbal Dass (decree holder), Tarsem Lal son of Birbal Dass, Rajwant Kaur and Chhoto daughters of Birbal Dass. A declaration was sought by Rameshwar Dass in the said suit that he is the exclusive owner and in possession of agricultural land measuring 21 Kanals 10 Marlas and for declaring that the decree dated 26.5.1988 passed in suit titled Birbal v. Ram Nath and others (Civil Suit No.124 of 29.4.1987) are absolutely illegal, null and void and without jurisdiction, ineffective and nullity qua the rights of the plaintiff Rameshwar

Dass. Besides, the judgment and decree dated 19.10.1989 passed by the learned Additional District Judge, Sangrur in appeal arising out of the above suit were also illegal, null and void, without jurisdiction and ineffective qua the rights of the plaintiff Rameshwar Dass. A further declaration was sought that any order/orders passed in execution of the impugned judgments and decrees are also illegal, null and void and inoperative as regards the rights of the plaintiff Rameshwar Dass. A declaration was further sought that the attachment orders of the land detailed in the suit are also illegal, null and void, without jurisdiction and inoperative as against the rights of the plaintiff. In the said suit none appeared for the parties on 17.7.1997 and accordingly the suit was dismissed by the learned Additional Civil Judge (Senior Division), Sunam in terms of the provisions of Order 9 Rule 3 CPC. Therefore, it is evident that endeavour on the part of the defendant No.1 Ram Nath in Civil Suit No.124 of 29.4.1987 has been to remain in possession of the suit land by some means or the other and by taking resort to various suits and filing applications. Consequently, the observations of the learned Executing Court in its impugned order that there was nothing in the order of the learned Sub Judge Ist Class, Sunam which may show that the Court had restrained them from taking possession of the attached property in due course of law. Besides, the decree dated 26.5.1988 had become final so the decree holder has the same rights against the subsequent vendee as he has with the original landlord. It may also be mentioned that Birbal (decree holder) had died on 6.2.1994 leaving behind his widow Shakuntla Devi, his son Tarsem Lal and minor daughters Rajwant Kaur and Chhoto. They were impleaded as LRs of Birbal in the present case vide order dated 12.8.1994.

In view of the above discussion, the order of injunction passed in favour of the decree holder Birbal is liable to be enforced by complying with the order dated 30.7.1993 passed by this Court in Civil Revision No.163 of 1993. The petitioner, if he has any right to the suit land by virtue of the sale, may seek possession of the same in accordance with law but he cannot continue in possession under he garb of the sale deed dated 11.11.1991 executed in his favour by Kamal Kishore who is stated to be a co-sharer in respect of the land.

With the aforementioned observations, the civil revision petition stands dismissed.

November 29, 2006. **(S.S. Saron)**
Judge

hsp

Whether fit for indexing: Yes